

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

BRENDA TRACY, LLC; SET THE  
EXPECTATION, A NON-PROFIT  
ORGANIZATION; JANE DOE 1;  
JANE DOE 2; JANE DOES YET TO  
BE IDENTIFIED,

Plaintiffs,

v.

AGUSTIN ALVARADO; MEL  
TUCKER; JENNIFER Z. BELVEAL;  
FOLEY & LARDNER LLP; JOHN  
DOE(S) AND JANE DOE(S) IN  
POSSESSION OF RECORDS WHOSE  
NAMES ARE KNOWN ONLY TO  
DEFENDANTS,

Defendants.

Case No. 23-1102

Hon.

Removed from the 30<sup>th</sup> Judicial  
Circuit Court, Ingham County  
(Case No. 23-0671-CZ)

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**DEFENDANTS' NOTICE OF REMOVAL**

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Defendants Agustin Alvarado (“Agustin”), Mel Tucker (“Tucker”), Jennifer Z. Belveal (“Attorney Belveal”), and Foley & Lardner LLP (“Foley”), pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, remove the Michigan state court civil action captioned *Brenda Tracy, LLC et al., v. Alvarado et al.*, Case No. 23-0671-CZ (the “State Case”) from the 30th Judicial Circuit Court of Michigan, to the United States District Court for the Western District of

Michigan. In support of removal, Defendants provide a short and plain statement as follows:

**PROCEDURAL BACKGROUND AND TIMELINESS OF REMOVAL**

1. On October 6, 2023, Plaintiffs Brenda Tracy, LLC (“BTLLC”), Set the Expectations (“STE”), and unnamed Jane Doe plaintiffs (collectively, “Plaintiffs”), filed a complaint against Agustin, Tucker, Attorney Belveal, and unnamed Jane and John Doe defendants (“Unnamed Defendants”), in Ingham County, Michigan, in the 30th Judicial Circuit Court of Michigan, Case No. 23-0671-CZ (the “Complaint”).

2. Also on October 6, 2023, contemporaneously with their Complaint, Plaintiffs filed a Motion for Emergency Temporary Restraining Order and/or Preliminary Injunction (“Plaintiffs’ Motion”). On the same day, the Honorable Judge James S. Jamo issued an emergency temporary restraining order (the “TRO”) restraining and enjoining Agustin, Tucker, Attorney Belveal, and Unnamed Defendants and scheduled a hearing on Plaintiffs’ motion for a preliminary injunction for October 17, 2023. The case is assigned to the Honorable Wanda M. Stokes.

3. Defendant Belveal was served with a Summons, the Complaint, Plaintiffs’ Motion, and the TRO on October 6, 2023.

4. On October 11, 2023, Plaintiffs filed their First Amended Complaint (“Amended Complaint”) which dropped causes of action pled in the original

Complaint, added new causes of action, and named the law firm, Foley & Lardner LLP, as an additional defendant.

5. Defendants Agustin, Tucker, Belveal, and Foley (collectively, “Defendants”) were provided a courtesy copy of a First Amended Summons and the Amended Complaint on October 11, 2023, via email.

6. Defendants consent to and file this Notice of Removal within the 30-day period prescribed by 28 U.S.C. § 1446(b)(1). Unnamed Defendants need not consent to, nor join in, this Notice of Removal. *See, e.g., Steele v. Am. Honda Motor Co., Inc.*, 413 F. Supp. 3d 678, 681 (E.D. Mich. 2019) (holding that a “John Doe” defendant is “not yet [a] part[y] to the suit” and thus, “was not required to join in or consent to the removal”).

7. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders, and other papers or exhibits provided to Defendants as of the date of removal are attached hereto as **Exhibit A**.

8. The United States District Court for the Western District of Michigan embraces Ingham County, where the State Case is pending, and thus, this Court is the proper forum for removal pursuant to 28 U.S.C. §§ 89(b) and 1441(a).

9. In accordance with 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be promptly served on all named parties and filed with the Clerk of the 30th Judicial Circuit Court of Michigan.

10. This Notice of Removal has been signed by the undersigned pursuant to Federal Rule of Civil Procedure 11, as required by 28 U.S.C. § 1446(a).

### **GROUND FOR REMOVAL**

11. Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the . . . defendants, to the district court . . . for the district and division embracing the place where such action is pending.”

12. As an initial matter, this Court embraces Ingham County, Michigan, where the State Case was filed. Removal to this Court is thus proper from a forum and venue perspective. 28 U.S.C. § 1441(a).

13. Moreover, federal district courts have original jurisdiction over “all civil actions arising under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331. Thus, original “[f]ederal-question jurisdiction exists when the cause of action arises under federal law,” *Miller v. Bruenger*, 949 F.3d 986, 990 (6th Cir. 2020), such as in “suits brought to enforce federal statutory rights.” *Barker v. Chesapeake & Ohio R.R.*, 959 F.2d 1361, 1368 (6th Cir. 1992).

14. In the Amended Complaint, Plaintiffs assert a claim under the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030, a federal statute. (Am. Compl. ¶¶ 47–53.) Because Plaintiffs seek to enforce a federal statutory right, this Court has original federal-question jurisdiction over the State Case. *Barker*, 959 F.3d at 1356.

15. This court has supplemental jurisdiction over Plaintiffs’ state law claims because such claims are part of the same “case or controversy” as Plaintiffs’ CFAA claim. 28 U.S.C. 1367(a); *see also Wis. Dep’t of Corr. v. Schacht*, 524 U.S. 381, 387 (1998) (internal quotations omitted) (“Supplemental jurisdiction allows federal courts to hear and decide state-law claims along with federal-law claims when they are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.”)

16. For the purposes of supplemental jurisdiction, state and federal claims form part of the same case or controversy, where they “derive from a common nucleus of operative fact.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966). Here, each of Plaintiffs’ claims, both state and federal, arise from the *exact same* set of operative facts (*i.e.*, the alleged access to and use of Ahlan Alvarado’s phone), and thus, form part of the same case or controversy. (*See generally* Am. Compl.) For these reasons, this Court may properly exercise supplemental jurisdiction over Plaintiffs’ state law claims.

17. Because the requirements for removal and supplemental jurisdiction, set out in 28 U.S.C. §§ 1441(a) and 1367, respectively, are satisfied, removal of the State Case is proper.

### NON-WAIVER OF DEFENSES

18. Defendants have not attempted to litigate this case in state court or taken any action that could be construed as a waiver or their right of removal.

19. By removing the above-captioned case to this Court, Defendant does not waive any of its available defenses. Defendant specifically reserves all of its available Defenses.

**WHEREFORE**, Defendants request that this Notice of Removal be deemed good and sufficient and that Plaintiffs' First Amended Complaint be removed from the 30th Judicial Circuit Court of Michigan into this Court for trial and determination as provided by law, and that this Court enter such orders and issue such process as may be proper to bring before it copies of all records and proceedings in such civil action as if it had been originally commenced in this Court.

Dated: October 16, 2023

Respectfully submitted,

/s/ John F. Birmingham  
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*Attorneys for Defendants for  
Purposes of Removal*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2023, I caused to be filed Defendants' Notice of Removal and this Certificate of Service using the ECF system. A copy is being served via Federal Express and email to the Ingham County Circuit Court Clerk and to opposing counsel at the addresses set forth below:

Eric D. Delaporte  
Delaporte Lynch PLLC  
210 State Street  
Suite B  
Mason, MI 48854  
Eric@DelaporteLaw.com

Ingham County Circuit Court Clerk  
Ingham County Courthouse  
315 S. Jefferson, 3rd Floor  
Mason, MI 48854  
nhowie@ingham.org

/s/ John F. Birmingham, Jr.  
John F. Birmingham, Jr.